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No.

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1999

JOSEPH N.Y. TSU and CECILIA W. TSU
Petitioners

vs

JOHN A. VOS, LAW OFFICE OF JOHN A. VOS and DOES 1 through 10
Respondents

On Petition for Writ Of Certiorari
To The United States Court Of Appeal
For the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Joseph N. Y. Tsu & Cecilia Tsu
213 Cleveland Court
Mill Valley, California 94941
(415) 388-3862

Petitioners Pro Se

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QUESTION PRESENTED

Whether Federal is the forum provides a litigant who properly invokes the jurisdiction of a federal court to consider title 11 and constitutional claims, when those substantially unrelated claims were unable to be asserted in the prior state trial because of the fraudulent concealment, and then the litigant is compelled to accept a state court's determination of not to determine those issues for inappropriate form and objection of defendant.

Whether further interpretation and application of California preclusive law is required for the decision of res judicata entered merely is based on the nonsuit decision introduced rather than the record of the prior trial, is it inadequate for the panel to determine the preclusive issue under collateral estoppel; panel says nothing on the preclusive effect on the claims-issues barred in the prior state trial, redetermination of preclusive effect is necessary.

TABLE OF CONTENTS

QUESTION PRESENTED i
TABLE OF CONTENTS ii
TABLE OF AUTHORIES, STATUTES & CODES iii
OPINIONS BELOW 1
JURISDICTION 1
TWO RELATED CASES 2
STATUTORY PROVISIONS ..... APP 17
STATEMENT OF CASE 2
I. Underlying Chapter 11 Case 3
What was known when State complaint was filed 3
State complaint was based on the causes of the SECOND DISMISSAL and the Fee Examination of the Bankruptcy court, contract, fiduciary issues 3
Federal complaint concerns the delayed discovered acts before the SECOND dismissal, title 11 issues 5
II. The state trial the lengthy continuance, discovery of the concealment, its bar to amend the pleading and supression defendant's motion of no expert was required 8
III. The innumerable conflicts the decision below brings 9
REASON FOR GRANTING THE WRIT 12
I. To secure the protection for the similarly situated chapter 11 debtors and to protect the central policy of the bankruptcy system, mandated by the Congress ... 12
II. To resolve the conflicts of decision of preclusive effect of state judgment on federal courts with the decisions of other Circuit and U.S. Supreme Court "The abstention doctrine may not be used as a vehicle for depriving individuals of an otherwise cognizable right to have federal courts make factual determination essential to the resolution of federal question." 16
III. To secure an opportunity of a fair and full procedure for a litigant. Had it been a capital punishment case, litigant would have been still remained on the death bench waiting to be executed as the result of

deprivation of such opportunity again, this time in the federal courts 21
IV. To ensure federal courts' obligation to provide adequate forum for complete resolution of all the issues, state and federal under Colorado River Doctrine. The decision necessary has contemplated that it will have nothing further to do in resolving any substantive part of the underlying case which are federal matters 24
CONCLUSION 27

APPENDIX A
Memorandum Decision of the U.S. Court of Appeal APP 1
APPENDIX B
Order of Dismissal of U. S. District Court ..... APP 3
Order to file the report's transcript ..... APP 5
Order denied motion for leave to file motion for reconsideration ..... APP 6
APPENDIX C
Motion to limit liability & Causation Evidence, a lay person could make a determination of negligence APP 7
Plaintiffs' Motion to amend the pleading to include conspiracy ..... APP 8
Reporter's transcript of state court denied plaintiff's motion to amend the pleading ..... APP 9
Reporter's transcript of Order & Judgment of granting defendant's motion of nonsuit ..... APP 10
APPENDIX D
Cover sheet of Chapter 11 Completion Papers ..... APP 13
Blank Schedule H, Debtor has no codebtor filed .. APP 14
Fraudulently altered Order conditioning continuance of automatic stay ..... APP 15
Section of Trans. of bankruptcy Court proceeding APP 16
APPENDIX E
Statutes involved ..... APP 17

TABLE OF AUTHORITIES

Cases	Page
Bank of Marin v. John M. England, Trustee In Bankruptcy 385 U.S. 99 (1966)	12
Begier v. IRS 496 U.S. 53 (1990)	12
Budd v. Nixson (1971) 6 Cal 3d 195	22
Barker v. Hull (1987) 191 Cal App 3d. 221	11,19,20
Carroll v. Puritan Leasing Co. (1987) 77 CalApp 3d.481..	10,20
Carson v. Facilities Development Co. (1984) 36 Cal. 3d 830	23
Castro v. Higaki (1994) 31 Cal App 4th 350	11,18,19
Clark v. Bear Stearns & Co., 966 F.2d 1318 (9th Cir 1992).	11,18,19
Clark v. Yosemite Community College Dist. 785 F.2d 781 (9th Cir 1986)	16,18,21,25
Colorado River Doctrine. 424 U.S. 800 (1976)	11,24
Craig v. County of Los Angeles (1990) 221 Cal App 3d. 1294	11,18
Cromwell v. County of Sacramento 94 U.S. 351, 24 L.Ed. 195 (1877)	21
Davis v. Krasna (1971) 12 Cal App 3d 1049	17
Day v. Rosenthal (1985) 170 Cal App 3d 1125, cert den 475 U.S. 1048	17,23
Goebel v. Lauderdale (1989) 214 CalApp 3d 1502	23
Gilbert v. Ben-Asher, 900 F.2d 1407 (9th Cir 1990)	16,17
Gregory v. Wichnall 153 F.3d 1071 (9th Cir 1998)	18
Harris Pine Mills In re 44 F.3d 1431 (9th Cir 1995)	25
Hernandez v. City of Los Angles 624 F.2d 935 (9th Cir 1989)	10,19,20
Intel corp. v. Advanced Micro Devices, Inc. 12 F.3d 908 (9th Cir 1993)	25,26
Kawaauhau v. Geiger 523 U.S. 57 (1998)	8
Kimes v. Stone 94 F.3d 1121 (9th Cir 1996)	26
Marrese v. American Academy of Orthopaedic Surgeons 470 U.S. 373 (1985)	16

Midlantic Nat. Bank v. New Jersey
D.E.P. 474 U.S. 494 (1986) 14
Mirabito v. Liccardo (1992) 4 Cal App 4th 41 23
Migra v.Warren City School Dist. Bd of Ed.
465 U.S. 75 (1984) 11,16,18,27
Montana v. U. S. 440 U.S. 147 (1979) 10,11,17,19,21,25,27,28
Morgan In re 197 B.R. 892 (N.D. Cal 1996) 26
Moses H. Cone Hospital v. Mercury Construction
Corp. 460 U.S. 1 (1983) 24
N.Y. Internat. Hostel Inc. In re 517 B.R. 748
(S.D. N.Y. 1993) 8
Pace In re 159 B.R.890 (9th Cir BAP 1993) 14
Pace In re 67 F.3d 187 (9th Cir 1995) 14,15
Punton v. City of Seattle 805 F.2d 1378 (9th Cir 1986) 26
Robi v. Five Platter, Inc 838 F.2d 318 (9th Cir 1988) 19
Schwartz In re 954 F.2d 569 (9th Cir 1992) 15
Smith v. Lewis (1975) 13 C.3d 349 22
Stanly v. Richmond (1995) 35 CalApp.4th 1070 22
Steen v. John Hancock 106 F.3d 904 (9th Cir 1997) 20
Taylor In re 884 F. 2d 478 (9th Cir 1989) 15
Tevis v. Beigal (1957) 156 Cal App 2d. 8 20
Travelers Indem. Co. v. Madona 914 F.2d
1364 (9th Cir 1990) 24,25,26
Unites States v. Cardall 885 F.2d 656 (9th Cir 1989) 14
United States v. Grant 971 F.2d 799 (1st Cir 1992) 13
United States v. Lasky 600 F.2d 765 (9th Cir)
cert denied 444 U.S. 979 (1979) 20
United States v. Mody 923 F.2d 341 (9th Cir)
cert. denied 50 U.S. 821 (1991) 15
United States v. Whiting Pools, Inc. 462 U.S. 198 (1983) .. 13
Walker In re 861 F.2d 597 (9th Cir 1988) 7
Williams In re 124 B.R. 311 (Bankr C.D.Cal 1991) 7
Western System v. Ulloa 985 F.2d 864 (9th Cir 1992) 10,17

STATUTES AND CODES

11 U.S.C. §329 4
11 U.S.C. §§362, 362(a)..... 5,13,14
11 U.S.C. §362(a)(3) 14
11 U.S.C. §362(h) 14
11 U.S.C. §§523(a)(4), (6) 8
11 U.S.C. §549 7,8
11 U.S.C. §554 7
11 U.S.C. §§1121-1129 13

Bankruptcy Rule 1007(c) 6
Bankruptcy Rule 6007 7
Bankruptcy Rule 7062, 8002(b) ..... 6.

18 U.S.C. §153 14
18 U.S.C. §1341 16
18 U.S.C. §§1961(1)(B)(D) 16
28 U.S.C. §1254 1
28 U.S.C. §1334(a))b) 25
28 U.S.C. §1738 16,21,25

42 U.S.C. §1983 12,15
42 U.S.C. §§1985, 1986 ..... 16.

Fed Rule Civ P. 52(a) 20
Calif. Civ Code §§1213-1215 7
Calif. Evid Code §776(a) 23

Collier On Bankruptcy 14

PETITION FOR WRIT OF CERTIORARI

Petitioners Pro se, Joseph N. Y. Tsu and Cecilia W. Tsu, husband and wife respectfully prays that a writ of certiorari issue to review the judgment for the Ninth circuit in this case.

OPINIONS BELOW

The Memorandum Decision of the United States Court of Appeal appears at Appendix "A" to the petition and is unpublished. (App 1-2).

The Orders of the United states District Court appear at Appendix "B" to the petition (App 3-6).

JURISDICTION

The date on which the United States court of Appeals decided the case was May 4, 2000.

On June 19, 2000 the 45th day after the Appeal Court's Order, Request for Rehearing with Suggestion for Rehearing En Banc was filed. [45 days is because the U.S. Government was related in the underlying case. Please see related cases, next page.]

On June 21, 2000 a motion to file the delayed Request and Rehearing en banc was filed; because we were told to do so. On May 22, 2000, a Memorandum was already filed informing the Appeal Court that the government and its agents were related to the underlying case.

As of the date, innumerable phone calls have been made, no answer or order has been given. The jurisdiction of this court is invoked 28 U.S.C. §1254.

TWO RELATED CASES INVOLVED

The following related case are all based on the same underlying chapter 11 case of this instant case. This instant case was filed because after the discovery of the concealed claims and issues of provisions of title 11, the state court [Related case NO. 1] had barred to amend the pleading to include these federal claims, it also deemed lack of jurisdiction (App 9), and the defendant's motion of no expert witness was not required had been suppressed. (App 7)

1. U.S. Supreme Court case No. 99-1849, Tsu v. John A. Vos, Law Office of John A. Vos, the state claim [contract, fiduciary duty and negligence] is being appeal, pending for the Petition for writ of certiorari. It was filed in the state before the discovery of the concealment.

2. U.S. supreme court case No. 99-7178, Tsu v. Tracy Federal Bank; U. S. SBA; Spencer P. Scheer, et al, the creditors of the underling case. It was filed after the discovery of the concealed concert acts in violation of due process of bankruptcy court, violation of provisions of title 11, and false claim and fraudulently altered orders had been filed by the creditor-defendants.

STATEMENT OF THE CASE

The dismissal under res judicata of claim preclusion is based upon the state decision of nonsuit judgment introduced for **"lack of expert witness on professional negligence"** (App 10-12) which is in conflict with state's own well

established authority.

I. The Underlying Chapter 11 Case

What was known when State complaint was filed.

Background. The holders of the SBA loan, had put us in catch 22 position and failed to correct known errors cumulated in the past years. Than, the business was slow, though, the loss was not much, about ±$1,000 per month. But when they decided to call the erroneous default of $140,000, we were advised to seek chapter 11 protection. Because SBA still would not allow the relieve and sell of the cross collateral, a rental building which would have pay down almost the half of the loan (APP 17), and keeping the one with our 200-seat restaurant, as Vos stated in the court.

Chapter 11 Fee Agreement and Court Order of employment by the estate stated: "Preparing and filing of Petition, statement of Financial affairs schedules, disclosure statement, Plan of Reorganization...." with "no adverse interest" was filed in court. $6,100 retainer was paid.

When the state complaint was filed it was based on the **SECOND dismissal, FEE EXAMINATION** of the Court (at see next page). That was what the court knew and our knowledge at the time.

We only knew the respondent had filed the petition. **Case was dismissed, the FIRST time**, we were being evicted for the first time. Respondent claimed it was the mistake of the clerk of the court. Then, it was reopened. Date to submit the plan of Reorganization was fixed during the court hearing. Before the scheduled due date for the Reorgani-

zation plan, without a word he disappeared which caused the **SECOND dismissal.** 1/ 1/ Notice-order of statutes conference stated so clearly: "Debtor's attendance (**through counsel** if debtor is represented) is required if debtor fails to appear, the court may without further notice or hearing order at said status conference,that the case be dismissed."

Dismissal already was such a shock Then, the second eviction notices was served on us and the tenant in compounding our distress. Thus we realized the two properties secured by the SBA loan had been foreclosed with the large equity of the redemption and business necessary for the reorganization.

After the Clerk of the bankruptcy court understood our plight, out of compassion, taught us to file the motion pro se to vacate the dismissal in 10 days, with our letter to the judge.

Thus the **FEE EXAMINATION** 2/ was ordered by the court. 2/ "In the course of reviewing debtor's motion to vacate this court's January 24, 1994 order dismissing the above entitled case/1 .....(1) that John A Vos the attorney of the record for the debtors, failed to appear at the duly scheduled status conference on Jan 7, 1994; (2)..the case was dismissed because either Vos nor the debtors appeared at the status conference; and (3) that the court has no record of any order relieving Vos as debtor's attorney of record. Accordingly, Vos shall appear for a Fee Examination under U.S.C. §329 on March 7, 1994 at..... 'S/Thomas E. Carlson U.S. Bankruptcy Judge 1/ The motion to set aside the dismissal was "prepared by the debtors proceeding in pro per and is scheduled for hearing on February 14, 1994 at 9:00 a.m."

Through the mercy of the court, fire sale of two estate properties with our business was ordered.

Thus, it allowed us to salvage some equity to live on now. Reorganization right under chapter 11 was not restored.

Protection was well founded. Total claim was to be $823,664 actual payoff was 686,841, the difference was almost equal to the erroneous defraud amount claimed. Had not been the fire sale, conspirators could have obtained 2.43 time of the loan based on 1984 property valuation at the inception of the SBA loan.

Federal complaint concerns with the delayed discovered acts before the SECOND dismissal.

It is not "a near-identical claim is their 1995 state court action based on the same underlying facts," as deemed by the decision below.

Vos was working for the adverse interest, the SBA creditor, while purporting to serving us, his clients. He assumed a position adverse and antagonistic, without our free and intelligent consent he abandoned our interest and rights--properties and reorganization-- to the adverse party and knowingly and fraudulently concealed these acts from the court and from his clients.

1. Chapter 11 was intended to be dead upon arrival, by withholding a blank schedule H, in concealment (App 13,14) but was required in the complete papers filed.

On July 23rd 1993 the preliminary petition was filed, the stay was imposed under 11 U.S.C.§362 and stopped the foreclosures.

When the Complete petition papers was filed

without a required Schedule H (App 13, 14), for co-debtor, even we did not have co-debtor.

He then ignored the court order on August 6th, 93 and Bankruptcy Rule 1007(c) "....you are hereby notified that the case will be dismissed ....within 15 days period to file all appropriate schedules... or file a written objection.".

Order/Notice of dismissal on Aug 20th, 93 stated "Notice is given the debtors having failed to comply this court's order of August 6, 1993 and no objection having been filed, it is ordered this case is hereby dismissed.

He further failed to revive the case and restore the stay in 10 days, Bankruptcy Rule 7062, 8002(b) or before the forecloses.

On Sept 8th, 93. without the stay the two estate properties with the business secured by this SBA loan **were foreclosed** at the total erroneous loan amount claimed. But the **deed were not recorded.**

Meanwhile his first fraudulent Ex-parte request was filed claiming he needed extended time to file the papers. On Sept 14th, 93 after the foreclosures, he then filed the second Ex-parte request to reopen the case. The next day, Sept 15th 93 a blank schedule H "Debtor has no co-debtor" (App 14) was filed in concealment. It was on the 54th day instead of 15 days required under bankruptcy Rule 1007(c) and court order and he has the audacity to misrepresented this fact during the proceeding.

Case was reopened on Sept 22nd, 1993.

2. Than Vos was intentionally blind when creditor

removed the estate properties from the jurisdiction of the court and various falsified documents were filed to conceal its ownership. [The related U. S. Supreme Court case Tsus v. Tracy Federal Bank et al. No. 99-7178] .

After the case was reopened on Sept 22nd, on **Oct 18th, 93 creditor recorded the deeds** in its name, transferred the estate properties [Cal.Civil Code §§1213-1215] in concealment in violation of stay.

> "The reinstatement of stay after the foreclosure sale had been held, but before the recording of the trustee's deed of sale. They were not bona fide recording; post-petition transfers properly changeable under **Section 549** of the code. The deed were deemed void in *In re Walker* 861 F.2d 597 (9th Cir 1988)." *In re Williams* 124 B.R. 311 315 (Bankr C.D.Cal 1991)

Jointly with the creditor, the creditor's ownership of the estate properties and actual cause of the first dismissal were systematically misrepresented in court. Not only in person during the hearing, fraudulently altered court orders (App 15), false declarations, even false SBA Claim were also filed. [after the recording]

3. His abandonment of his cliets which caused the **second dismissal**, without required notice, hearing and court order [11 U.S.C. §554 (a)(b) and Rule 6007] was to remove the stay again for the creditor to posses the properties. The last step of the scheme, usurpation of the power of the bankruptcy judge, defeated the chapter 11.

4. The Bankruptcy court never knew the true state of the case. The bankruptcy judge, the biggest expert was continuously deceived.

On both occasions of reopening, the case was unable to be reopened properly, which result the fire sales.

"The avoidance power contained in **§549** was prevented to be invoked" *In re N.Y. Inernat. Hostel Inc.* 157 B.R. 748 753 (S.D. N.Y. 1993). The transfers were unable to be challenged.

A blank Schedules H was not prepared, then we would not have been forced to sell our properties with our business at a fire sale.

5. Defalcation while acting in a fiduciary capacity **§523(a)(4)**, willful and malicious injury, conscious disregard to the consequences to his clients **§523(a)(6)** in attacking the stay.

> "Intended the consequences of the acts, not simply the act itself of negligent or reckless", "formulation triggered in the lawyer's mind intentional tort, as distinguished from negligent or reckless torts." *Kawaauhau v. Geiger* 523 U.S. 57 61 (1998)

II. The state trial and the lengthy continuance, discovery of the Concealment; its bar to amend the pleading and supression of the Vos' motion of no expert was required .

After the trial started on Oct 16th 1996 Vos requested for the continuance. It was resumed in Feb 1998 with a different judge.

It started with the record of phone call from the

bankrutpcy court requesting a blank Schedule H in Vos' file. Then its filing was discovered in the docket sheet. It was not the mistake of clerk of the bankrutpcy court, which caused the FIRST DISMISSAL, as he told the court and us. It was this blank missing schedule H (App 14) filed in concealment after his request to reopen the case, caused the dismissal.

Still the discovery stated above may not be complete and merely touched the surface, for we are not apt to know the bankruptcy proceeding.

No issues was adjudicated. The trial was a total mockery and total biased and a wh ite-wash. (See related case No. 1) It **barred the amendment of pleading** to including the delayed discovered issues of conspiracy to commit the fraud and violation of provision of title 11. (App 8-9) Because Vos objected to it and then state court also deemed to be the improper jurisdiction. Also **Vos' motion of no expert witness was supressed.** (App 7) Therefore,**this Instant Complaint was filed.**

Such practice in the federal bankruptcy court believed by the California courts to be "in compliance with prevailing standards of legal practice in handling bankruptcies and that no conduct on Vos part caused any damages." All the prejudicial acts were ignored nonsuit for lack of expert witness on "professional negligence" was affirmed by the state Appellate Court.

III. The Innumerable Conflicts Or Failures The Decision below Brings

The dismissal under res judicata of claim

preclusion is based upon the state decision of nonsuit judgment introduced for **"lack of expert witness on professional negligence"**

1. The decision below overlooked that state courts had applied the same evidential standard to the claims of breach of contract and fiduciary duty. Professional negligence is not the only and exclusive remedy for an attorney's misdeeds in the state.

2. It forgot the doctrine of **collateral estoppel of the issues preclusion** and failed to pinpoint what the exact issues previously has determined under this preclusive doctrine required under California law. *Carroll v. Puritan Leasing Co.* (1987) 77 Cal App 3d 481 491 *Hernandez v. City of Los Angeles* 624 F.2d 935 937 (9th Cir 1989).

3. **It neglected all the** fact of the underlying case. Nor it cared what had happened in the state trial,

4. It disregarded the instant case concerns the delayed discovered of the fraudulently concealed federal claims of provisions of title 11 in the underlying chapter 11 case, *Western System v. Ulloa* 985 F.2d 864 871 (9th Cir 1992). Of which the respondent had the duty to disclose to the bankruptcy court and his clients under the fiduciary duty but failed to do so. That was why the federal claims of the instant case were not asserted when the state complaint was filed.

5. It ignored that Appellants were compelled to accept state decision of not to determine the delayed discovered claims-issues. *Montana v. U. S.* 440 U.S. 147. Due to the bar to amend the

pleading to add the federal claims. (App 8,9)

6. It **said nothing about preclusive effec** of state-court judgment on issues-claims **barred in the state** which are the causes of action for this instant case. *Migra v. Warren city School Dis. Bd of Ed.* 465 US 75 79 (1984)

7. It disregarded the pending federal claims of provisions of title 11 are the different "primary right" or "harms suffered" from the state claims of contract, fiduciary duty and negligence. *Craig v. County of Los Angeles* (1990) 221 Cal App 3d. 1294 1301. *Castro v. Higaki* (1994) 31 Cal App 4th 350 357 under California preclusive law.

8. It completely ignored the record of manifested injustice, and violation of due process in the state courts. *Montana v. U. S.* 440 U. S. 147, 153 (1979) [the related Supreme Court case No. 99-1849]

9. It ignored that the issues in the instant case never have been "litigated" *Barker v. Hull* (1987) 191 Cal App 3d 221 226; *Clark v. Bear Stearns* 966 F.2d 1318 1321 (9th Cir 1992).

10. It neglected federal forum not only is the "adequate vehicle" also has "obligation to ensure the 'complete and prompt resolution of the issues' under the *Colorado River doctrine.* 424 U.S. 800.

REASON FOR GRANTING THE WRIT

I. To secure the protection for the similarly situated chapter 11 debtors and to protect the central policy of the bankruptcy system, both are mandated by the Congress. Therefore, it has national importance of having the Supreme Court decide the questions.

It is not merely breach of contract and fiduciary duty of the state claims, deemed to be the same "claims" under the doctrine of res judicata.

The courts below ignored the delayed discovered fact of the underlying case that the bankruptcy court's due process and enforcement power were removed by the bankruptcy experts against the mandate of the Congress. Thus the rights protected by the Constitution under 42 U.S.C. §1983 were also violated.

1. The fundamental point is, the decision below disregard the central policy of the bankruptcy system had been defeated, namely "the due administration of the bankruptcy court," and "the equality of distribution among creditor." *Begier v. IRS* 496 U.S. 53, 58 (1990), the main concern of this Court.

> [a]n overriding consideration that equitable principles govern the exercise of bankruptcy jurisdiction." was easily removed. *Bank of Marin v. John M. England, Trustee In Bankruptcy* 385 U.S. 99, 103 (1966)

Where as here, before a required **blank schedule H**, (App 13, 14) being withheld by Vos from the filed Complete Papers (App 12), had been filed

case was dismissed, the estate properties with business were foreclosed. Deeds were recorded properties of the estate were transferred right **after** the reinstatement. Just like this Court has stated:

> "The reorganization effort would have no chance of success, if property essential to running the business were excluded from the estate" *United States v. Whiting Pools, Inc.* 462 U.S. 198 203 (1983)

This court also has stated "The trustee or debtor-in-possession is authorized to manage the property of the estate and to continue the operation of the business." "Until the business can be reorganized pursuant to a plan under 11 U.S.C. §§1121-1129. *United States v. Whiting Pools, Inc.* 462 U. S. 198, 203 (1983).

Where as here, before the opportunity to put forward a Plan of reorganization, we, the debtors and the tenant were being evicted for the second time and business was inventoried. Resulted from the **second fraudulent dismissal** which triggered the fraudulently altered conditions in the order filed [it was not signed by the judge] (App 15); debtors' legal, equitable and possessory interest in property were removed, which defeated rehabilitation right. *U.S. v. Grant* 971 F.2d 799 805 (1st Cir 1992).

2. The courts below failed to uphold 11 U.S.C. §362 operates as automatic stay, the foundation of bankruptcy law, nor says nothing on the defeating or violation of provision title 11.

"§362(a) has been described as one of the fundamental debtor protections provided by the bankruptcy laws." *Midlantic Nat. Bank v. New Jersey D.E.P.* 474 U.S. 494 503 (1986). The provision states: §362 "operates as a stay, applicable to all entities, of.....(3) any act to obtain possession of property of the estate or...to exercise control over property of the estate;" "Whether judicial or private, that seek possession of property of estate." *Collier On Bankruptcy* at ¶362.03[5]

"[T]he provisions of Title 11 of the bankruptcy law are defeated when a person without court approval acts in a manner that diminishes the estate of the debtor, and thus interferes with the equitable use of distribution [of the court] of any material part of the assets of the estate." *U.S. v. Cardall* 885 F.2d 656, 678 (9th Cir 1989).

Defeating chapter 11 is a crime under 18 U.S.C. §153. *In re Pace* 159 B.R.890 905 (9th Cir BAP 1993), affirmed *In re Pace* 67 F.3d 187 (9th Cir 1995).

The acts of concealment were also stayed under §362(a)(3). *In re Pace* 159 B.R.890 899-900 (9th Cir BAP 1993), affirmed *In re Pace* 67 F.3d 187 192. (9th Cir 1995) "Concealment is an all-encompassing term. It not only covers the nondisclosure of that which must be disclosed, but also covers the nondisclosure of that which may be independently illegal." Collier on *Bankruptcy* at ¶7.02[1][b] of *Relevant and sufficient evidence for concealment case*

Section §362(h) provides "An individual

injured by any willful violation of stay provided by this section shall recover actual damages, including cost and .....and in appropriate circumstance, may recover punitive damages. ....By using the words 'shall recover,' Congress intended that the award of actual damages ....is mandatory and not within the discretion of the court." *In re Pace* 67 F.3d 187 191 (9th Cir 1995)

"Debtor need not affirmatively challenge creditor violations of the stay or the violations are void without the need for direct challenge ... Congress intended violations of the automatic stay to be void rather than voidable." *In re Schwartz* 954 F.2d 569 571 (9th Cir 1992) "Having established the post-petition character of the transfer, debtor has proven her prima facie case to void the transfer." *In re Taylor* 884 F. 2d 478 483 (9th Cir 1989).

The decision below failed to recognize the creditor of SBA loan never was stayed. Either the stay was fraudulent removed repeatedly by Vos by violation of other provisions of title 11 he encountered or he was intentionally blind on creditor's acts in violation of stay.

Thus "Bankruptcy court's access to the accurate information in the case was denied by **the continued misrepresentation** undertaken [with the proscribed criminal intent.] *U.S. v. Mody* 923 F.2d 341, 347 (9th Cir) cert. denied 50 U.S. 821 (1991).

3. Those acts in violation of stay also are in violation of 42 U.S.C. §1983, deprivation of debtor's property right under the state law, and

debtor's rehabilitation right under chapter 11. Violation of 42 U.S.C. §1985 conspired to interfere with rights; 42 U.S.C.§1986 neglect to prevent conspiracy. 18 U.S.C. §1341 U.S. mail was used to serve in furtherance of the plan. 18 U.S.C. §§1961(1) (B)(D) Mail fraud and offenses involving fraud connected with the Chapter 11 case.

II. To resolve the conflicts of decision of preclusive effect of state judgment on federal courts with the decisions of other Circuit and U.S. Supreme Court. "The abstention doctrine may not be used as a vehicle for depriving individuals of an otherwise cognizable right to have federal courts make factual determination essential to the resolution of federal question." Montana v. U. S. 440 U.S. 147, 163 (1979).

"28 U.S.C. §1738 provides that a federal court must give the state judgment the same full faith and credit as it would be entitle to in the courts of the state in which it was entered." *Marrese v. American Academy of Orthopaedic Surgeons* 470 U.S. 373 380 (1985) (interpreting 28 U.S.C. §1738), *Clark v. Yosemite Community College Dist.* 785 F.2d 781 784 (9th Cir 1986). Accordingly, the res judicata and collateral estoppel effect of a state judgment is determined by application of state law. *Migra v.Warren City School Dist. Bd of Ed.* 465 U.S. 75 81 (1984).

Where as here (App 1-2), **collateral estoppel** of issue preclusion was completely ignored; in applying **res judicata** of claim preclusion, the required California law was not applied. *Gilbert*

v. Ben-Asher, 900 F.2d 1407, 1410 (9th Cir 1990) (per curiam), merely cases were cited. Here is how.

1. The decision below ignored the fact that the claims in the instant case had been intentionally and fraudulently concealed by respondent, at the time the state claims were filed. "An intentional failure to disclose is an actionable fraud in the presence of a fiduciary duty to disclose." *Day v. Rosenthal* (1985) 170 Cal App 3d 1125, 1159 cert den 475 U.S. 1048.

> "A claim is not barred by res judicata if ignorance of cause action caused by the misrepresentation or concealment." *Western System v. Ulloa* 985 F.2d 864 871 (9th Cir 1992),

2. The decision below said nothing about preclusive effect of state-court judgment on issus-claim barred in the state [which are the federal causes of action]. The decision ignored the fact that Petitioners are "compelled to accept state court's determination of not to determine the federal issues, which can not be barred under res judicata. *Montana v. U. S.* 440 U.S. 147 (1979).

(1) The federal claims, were barred to be implemented in the pleading with Motion in Limine (App 8) in the state court, after the discovery. Because it was rejected by Vos, the respondent. Now he "may not hide behind the defense of res judicata in the second proceeding." *Davis v. Krasna* (1971) 12 Cal App 3d 1049 1056.

(2) The state court also deemed it had no jurisdiction over bankruptcy issues listed in the motion (App 8-9) "A claim is not barred by res judicata if the forum in which the first action was brought lacked subject matter jurisdiction to adjudicate that claim." *Clark v. Bear Stearns* & Co., 966 F.2d 1318 1321 (9th Cir 1992).

"Precluded from obtaining a definite judgment due to a procedural bar that would constitute an exception to the doctrine of res judicata." *Clark v. Yosemite Community College Dist* 785 F.2d 781 789 (9th Cir 1986).

"'Res judicata', or 'claim preclusion' bars all grounds for recovery which **could have been asserted** ....." *Gregory v. Widnall* 153 F.3d 1071 1074 (9th Cir 1998). "The decision says nothing on the issues-claims barred (in the state), **therefore, the case should be remanded for the District court's interpretation and application of California preclusive law.** *Migra v. Warren City School Dist. Bd. of Ed.* 465 US 75, 79 (1984).

3. The decision below deemed the claims in the state and the claims in the instant case as "near-identical claims" (App 2) without any support.

"Whether same claims exists between the earlier and later proceeding, California has adopted the **"primary right"** theory see *Craig v. County of Los Angeles* (1990) 221 Cal App 3d. 1294 1301. "The primary right is determined by the **harm suffered**," *Castro v. Higaki* (1994) 31 Cal App 4th 350 357.

The concealed federal harm of violation of provisions of title 11 or of defeating chapter 11 are different from the breach of contractual and

fiduciary of the state. The preclusive doctrine therefore does not apply, *Castro v. Higaki* (1994) 31 CalApp 4th 350 357. Subsequent litigation is not barred for the prior action did not involve the same claim or cause of action. *Robi v. Five Platter, Inc* 838 F.2d 318, 324 (9th Cir 1988).

4. The decision was rendered without examining whether the issues presented in the federal court had been "actually litigated", "submitted for determination and is determined" in the state court under the doctrine of collateral estoppel. *Barker v. Hull* (1987) 191 Cal App 3d. 221 226. "[a]n issue is actually and necessarily determined." *Montana v. U. S.* 440 U.S. 147, 153 (1979) in order to be barred under the preclusive doctrine.

Only Issues have been "litigated" in order to be barred *Barker* v. *Hull* (1987) 191 Cal App 3d. 221 226. *Clark v. Bear Stearns* 966 F.2d 1318, 1321 (9th Cir 1992).

5. The dismissal merely was based on the state non-suit decision introduced. (App 10-12) There was no record of the required findings of fact and conclusions of law.

"'It is not enough that the party introduce the decision of the prior court; rather the party must introduce a sufficient record of the prior proceeding to enable the trial court to pinpoint the exact issues previously litigated." See also *Hernandez v. City of Los Angles* 624 F.2d 935 937 (9th Cir 1989)." *Clark v. Bear Stearns* 966 F.2d 1318, 1321 (9th Cir 1992)

"[i]f the **STATE TRIAL** made specific **findings of fact** and **conclusions of law** similar to

those required of the district court under Fed R.Civ P.52(a)....to enable the court to pinpoint the exact issues previously determined, defendant have failed to meet his burden," *Hernandez v. City of Los Angeles* 624 F.2d 935 937 (9th Cir 1989),

The federal court could "look to the opinion of the prior judge in order to determined the scope of the previous judgment." *Tevis v. Beigal* (1957) 156 Cal App 2d. 8, 319 p.2d 98; *Carroll v. Puritan Leasing Co.* (1987) 77 Cal App 3d. 481 491.

The party seeks to assert collateral estoppel bears the burden of proof of showing that the issues were "fully presented to the court below and finally determined." *Tevis v. Beigal* (1957) 156 Cal App 2d. 8; *Carroll v. Puritan Leasing Co.* (1978) 77 Cal App 3d. 481 491.

And he also "bears the burden of showing with clarity and certainty what was determined by the prior judgment." *United States v. Lasky* 600 F.2d 765, 769 (9th Cir), cert denied 444 U.S. 979 (1979) *Steen v. John Hancock* 106 F.3d 904 911 913 (9th Cir 1997). Here there was no such record. The federal claims of the instant case were barred in the state court. Therefore, It is inadequate for the panel to determine the preclusive issue under collateral estoppel. *Barker v. Hull* (1987) 191 Cal App 3d. 221 226. Dismissal based on decision introduced is in conflic with other Circuits.

6. Had there been finding of fact and conclusion of law, "That changes in facts, essential to a judgment will render collateral estoppel inapplicable to a subsequent action even raising the same issues."

Montana v. U.S. 440 U.S. 147 159 (1979).

"It does not bar a suit on a different cause of action. When other facts or conditions intervene, forming a new basis for a claim, the issues are no longer the same and **res judicada does not apply.**" *Clark v. Yosemite Community College Dist* 785 F.2d 781 (9th Cir 1986)

"Under **collateral estoppel,** if an issue was not actually litigated and determined, the parties remain free to litigate that issue in future proceedings." *Cromwell v. County of Sacramento* 94 U.S. 351, 24 L.Ed. 195 (1877)

7. The judicial notice taken by the panel on the judgment of Appeals Court, affirming nonsuit for lack of expert witness on "breach of professional duties", nevertheless, it is still merely a decision of the prior court. Panel must have misapprehended, the state courts did not make any required findings of fact and conclusion of law on any issue.

As show above the federal decision below drastically altered or abolished 28 U.S.C.§1738, and presents conflicts with the decisions of the Circuits and of the U. S. Supreme Court.

III. To secure an opportunity of a fair and full procedure for a litigant. Had it been a capital punishment case, litigant would have been still remained on the death bench waiting to be executed as the result of deprivation of such opportunity again, this time in the federal courts.

"The redetermination of issues is warranted if

there is reason to doubt equality, extensiveness, or fairness of procedures followed in prior litigation." Montana v. U. S. 440 U.S. 147 164 Note 11 (1979).

There is no reason to doubt, but the record of depriving the equality, extensiveness, and fairness of procedures in the state courts. (The related Supreme Court Case No. 99-1849) And again, even the conspicuous prejudicial acts in violation of litigants' right in the state courts were ignored, this time by the federal courts. Such as:

1. State trial court erroneously bundled three different causes of action in one by using the same evidential standard to the different claims. The judgment of nonsuit of "breach of professional duties" for lack of expert witnesswas entered. State appellate court affirmed such nonsuit judgment in contrast to its established authorities.

> "The trial court erred by applying the same evidentiary standards to each of her three claims. [contract, fiduciary duty, negligence]. Appellant is, of course, correct that a breach of fiduciary duty is a species of tort distinct from a cause of action for professional negligence. *Budd v. Nixson* (1971) 6 Cal 3d 195, 200." *Stanly v. Richmond* (1995) 35 Cal App.4th 1070 1086 [the same Div 2 of the 1st Dist, one same judge].

2. Conflict with the authorities that the loss of opportunity for his client the attorney was held liable in *Stanly v. Richmond* (1995) 35 Cal App. 4th 1070 [the same Div 2 of the 1st Dist, one same judge], *Smith v. Lewis* (1975) 13 C.3d 349.

3. Conflict with authorities which held entirely proper to give jury instruction based on the Rules of Professional Conduct. *Mirabito v. Liccardo* (1992) 4 Cal App 4th 41 [the same Div Two of the 1st Dist, even with same judge], and *Day v. Rosenthal* (1985) 170 Cal App 3d 1125 cert den 475 U.S. 1048.

4. Conflict with Calif. Evid Code §776(a). "A party to the record of any civil action, or a person identified with such a party, may be called and examined as if under cross-examination by any adverse party at any time during the presentation of evidence by the party calling the witness." The courts below ignored that Vos, the defendant, an expert in chpater 11 and has the personal knowledge of the case was not allowed to be called in state trial.

5. Conflict with defendant's motion of no expert witness required. "....defendant acknowledges that the failure of Mr. Vos to appear at the January 7, 1994 Status conference could be determined to be an omission upon which **a lay person could make a determination of negligence, based upon common knowledge and experience.** As such,...for such 'lay person-cognizable' claims of negligence,...." (App 7)

Respondent's negligence was so clear that the testimony of a bankruptcy expert was not needed. Respondent's conduct demonstrate a total failure to perform ...." *Goebel v. Lauderdale* (1989) 214 CalApp 3d 1502, 1508. "Appellate courts have repeatedly held that expert testimony is unnecessary to a plaintiff's case where the fact sought to be proved in one within the general knowledge of laymen..." *Carson v. Facilities Development Co.* (1984) 36 Cal.3d 830 845.

All these give plenty of "reason to doubt".

Where as here, the record of the manifested injustice in the state courts were prejudicially disregarded. That is in conflict with the Constitution, the foundation of this nation.

IV. To ensure federal courts' obligation to provide adequate forum for complete resolution of all the issues, state and federal under Colorado River Doctrine. The decision necessary has contemplated that it will have nothing further to do in resolving any substantive part of the underlying case which are federal matters

"Colorado River rests on 'considerations of [w]ise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation.'" *Colorado River Doctrine.* 424 U.S. 800, 817 (1976), *Moses H. Cone Hospital v. Mercury Construction Corp.* 460 U.S. 1 13-16, (1983); *Travelers Indem. Co. v. Madona* 914 F.2d 1364 1367 (9th Cir 1990).

"Because of **the 'virtually unflagging obligation of the federal courts to exercise the jurisdiction given them,'** generally, as between state and federal courts, the rule is that **the pendency of an action in the state court is no bar to proceedings concerning the same matter** in the Federal court having jurisdiction...'" **"Only the clearest of justifications will warrant dismissal."** *(Citing omitted) Travelers Indem. Co.* 914 F.2d 1364 at 1367

Here there is no justification warrant dismissal:

1. It is "heavily weighted" in favor of the exercise of federal jurisdiction.

Implicating the right of a litigant who properly invokes the jurisdiction of a federal court to consider federal claims. This instant case involves causes of action created or determined by statutory provisions of title 11. 28 U.S.C. §§1334(a),(b) provides district court's jurisdiction. *In re Harris Pine Mills* 44 F.3d 1431 1434 1435 (9th Cir 1995).

Further more, as the record shows, the state court deemed that it was an inappropriate forum, and Petitioners were compelled to accept a state court's determination of not to determine federal claims. *Montana v. U. S.* 440 U.S. 147 159.

2. "The possibility that the state court proceeding might adequately protect the interests of the parties is not enough to justify the district court's deference to the state action. *Travelers Indem. Co.* 914 F.2d 1364 at 1370.

Presence of state law issues, especially issues relating to breach of contract and breach of fiduciary duty is not generally valid justification for granting dismissal under "wise judicial administration" of Colorado River. *Intel corp. v. Advanced Micro Devices, Inc.* 12 F.3d 908 (9th Cir 1993).

3. Federal full faith and credit statute of 28 U.S.C. §1738 did not justify dismissal *Intel corp.* 12 F.3d 908 at 914-915. Violation bankruptcy codes and rules involved the separate wrongs of the bankruptcy case, justify a separate federal action. *Clark v. Yosemite* 785 F2d 781 at 787 Note 6

Conspiracy to conceal estate properties, fraud and to defeat chapter 11, federal law governs when

fraud action arose for bankruptcy purpose, *In re Morgan* 197 B.R. 892 895-6 (N.D. Cal 1996).

Conspiracy to violate the rights, are separated concealed wrongs against a right to not be deprived of property, against a right to not be deprived to submit the plan of reorganization plan without due process of bankruptcy law. *Punton v. City of Seattle* 805 F.2d 1378 1380 (9th Cir 1986) *Kimes v. Stone* 94 F.3d 1121 1129 (9th Cir 1996).

So is the mail fraud and RICO acts, fraud and using U.S. mail in furtherance of the scheme connected with a chapter 11 case.

4. Federal forum not only is the "adequate vehicle" also has obligation to ensure the "complete and prompt" resolution of all the issues state and federal. Since state case involves routing issues of state law -- breach of contract, breach of fiduciary duty, negligence -- which the district court is fully capable of deciding there are no such rare circumstances here. *Travelers Indem. Co.* 914 F.2d 1364 1370 (9th Cir 1990).

The existence of state law issues does not outweigh the court's obligation to ensure the 'complete and prompt resolution of all of the claims, state and federal. By ignoring this obligation, the district court abused its discretion in granting dismissal of proceedings violated the 'wise judicial administration' doctrine of Colorado River." *Intel corp.* 12 F.3d 908 915 (9th Cir 1993)

CONCLUSION

1. The issues presented in the instant case in substance are different from those in the state court.

2. The controlling facts or legal principles are different significantly between the two complaints. [delayed discovered, fraudulently concealed legal principles of title 11 - the contract, fiduciary duty and negligence].

3. Unmixed questions of law in successive federal action involving substantially unrelated claims.

4. Implicating the right of a litigant who properly invoked the jurisdiction of a federal court to consider federal claims, including constitutional claims. Who were unable to assert federal claims because of the fraudulent concealment, who were compelled to accept a state court's determination of not to determine those federal issues.

5. The redetermination of issues is necessary for there is reason to doubt equality, extensiveness, and fairness of procedures followed in prior litigation. *Montana v. U. S.* 440 U.S. 147.

6. No determination by the decision below on the preclusive effect of the claim-issues barred in the state court; therefor it "should be remanded for the District court's interpretation and application of California preclusive law." *Migra v. Warren City School District Bd of Ed.* 465 U.S. 75.

Therefore it has national importance of having the Supreme Court decide the questions.

1. To secure the protection for the similarly situated chapter 11 debtors as mandated by the Congress. **2.** to protect the central policy of the bankruptcy system, the due administration of the bankruptcy court and equality of distribution among creditors, the main concern of the U.S. Supreme Court. **3.** To resolve the conflicts of decision of preclusive effect of state judgment on federal courts with the decisions of other Circuit and with this Court. **4.** To secure an opportunity of a fair and full procedure for a litigant. **5.** To ensure federal courts' obligation to provide adequate forum for complete resolution of all the issues, state and federal under Colorado River Doctrine.

The abstention doctrine can not be used as an another vehicle for "immunity". "The abstention doctrine may not be used as a vehicle for depriving individuals of an otherwise cognizable right to have federal courts make factual determination essential to the resolution of federal question." *Montana v. U. S.* 440 U.S. 147 at 163.

For the foregoing reasons, it is respectfully urged that this petition for writ of certiorari be granted, and that upon further consideration, the judgment of the Federal Appeal Court of the Ninth Circuit be vacated.

Respectfully submitted.

Joseph N. Y. Tsu
Petitioner pro se

Cecilia W. Tsu
Petitioner prop se

213 Cleveland court, Mill Valley, Ca 94941
(415) 388-3862

NOT FOR PUBLICATION

United States Court of Appeal
For the Ninth Circuit

	Date FILED
JOSEPH N.Y.TSU; CECILIA W. TSU, Plaintiffs-Appellants,	May 4, 2000
	No. 99-15909
	D.C.No.CV-98-03974-CRB
v.	
JOHN A. VOS et al., Defendants-Appellees	MEMORANDUM[1]

Appeal from the United States District Court
for the Northern District of California
Charles R. Breyer, District Judge, Presiding

Submitted April 17, 2000[2]

Before: KOZINSKI, RYMER, and FISHER, Circuit Judges.

Joseph and Cecilia Tsu ("Tsu") appeal pro se the district court's dismissal of their action under Fed R. Civ. P. 12(b)(6) based upon res judicata. We have jurisdiction pursuant to 28 U.S.C. §1291.

1. This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir R. 36-3

2. The panel unanimously find this case suitable for decision without oral argument. *See* Fed.R.App.P.34(a)(2). Accordingly, the Tsus' request for oral argument is denied.

We review the district court's application of res judicata de novo, *see Gregory v. Widnall*, 153 F.3d 1071, 1074 (9th Cir 1998)(per curiam), and we affirm.

To determine whether a state court judgment should be given preclusive effect, we must look to state law. *See Gilber v. Ben-Asher*, 900 F.2d 1407, 1410 (9th Cir 1990)(per curiam). Under California law, subsequent litigation is barred whenever the prior action: (1) was decided on the merits; (2) was final; and (3) involved the same claim or cause of action. See Robi v. Five Platters, Inc., 838 F.2d 318, 324 (9th Cir 1988). Because the Tsus raised **a near-identical claim is their 1995 state court action** based on the same underlying facts which resulted in a final judgment on the merits, the district court properly determined that the Tsus' action was barred by res judicata.[3] *See id.*

AFFIRMED.

3. Pursuant to Fed.R.Evid. 201(c), we take judicial notice of the California Court of Appeals' judgment in Tsu v. Vos, No. A083034 affirming the Marin County Superior Court's grant of nonsuit against the Tsus.

In the United States District Court
For the Northern District of California

		Date FILED
JOSEPH N.Y.TSU and CECILIA W. TSU, Plaintiffs	)	Mar 8, 1999
v.	)	No.98-03974-CRB
JOHN A. VOS, LAW OFFICE OF JOHN A. VOS, and DOES 1 THROUGH 10, Defendants	)	ORDER OF DISMISSAL

Now before the Court is defendant's motion to dismiss the complaint in the above captioned matter. After carefully considering the pleadings submitted by the parties, defendant's motion is hereby GRANTED.

Plaintiffs allege in their complaint that defendant, who is an attorney, represented them in bankruptcy proceedings and engaged in numerous instances of misconduct during that representation. They claim, *inter alia,* that defendant violated their civil rights, committed numerous state law torts such as fraud, and engaged in a conspiracy against them, alleging essentially the same conduct they set forth in the current complaint. *See* Tsu v. Vos Case No. 162817 (Marin County 1995). In that case, after plaintiffs presented their case to the jury, the court granted nonsuit in favor of the defendant, on the grounds that plaintiffs failed to meet the required evidentiary burden to support

their malpractice action.

Plaintiffs have essentially re-file their malpractice suit with Court in the guise of various other federal and state law causes of action. As such, the lawsuit is barred under the doctrine of *res judicata.* This doctrine "bars all grounds for recovery which could have been asserted, whether they were or not, in a prior suit between the same parties ... on the same cause of action, if the prior suit concluded in a final judgment on the merits." Int'l Union of Operating Engineers-Employers Construction Industry Pension v. Karr, 994 F.2d 1426, 1429 (9th Cir 1993) (quoting Ross v. International Brotherhood of Electrical Workers, 634 F.2d 453, 457 (9th Cir 1980). Clearly, each element underlying the doctrine of res judicata is met here.

In light of the foregoing, the above-captioned matter is DISMISSED, WITH PREJUDICE The proper remedy for plaintiffs is to pursue an appeal of the state court ruling within the state court system. It was inappropriate for plaintiffs to file another lawsuit against the defendant based on conduct during his representation of the plaintiffs in bankruptcy proceedings.

IT IS SO ORDERED

Dated: 3-8-99

s/"Charles R. Breyer"
U.S. District Judge

In the United States District Court
For the Northern District of California

	Date FILED
JOSEPH N.Y.TSU and CECILIA W. TSU, Plaintiffs	MARCH 19, 1999
v.	No.98-03974-CRB
JOHN A. VOS, LAW OFFICE OF JOHN A. VOS, and DOES 1 THROUGH 10, Defendants	ORDER

The plaintiffs are hereby ordered to file with the Court the portion of the Reporter's transcript cited on page one of their motion for leave to file motion for reconsideration. Failure to file this portion of the transcript by Friday, March 26, 1999 shall result in a denial of their motion.

IT IS SO ORDERED

Dated: 3-19-99

s/"Charles R. Breyer"
U.S. District Judge

In the United States District Court
For the Northern District of California

	Date FILED
JOSEPH N.Y.TSU and CECILIA W. TSU, Plaintiffs	)MARCH 30, 1999
v.	)No.98-03974-CRB
JOHN A. VOS, LAW OFFICE OF JOHN A. VOS, and DOES 1 THROUGH 10, Defendants	) ORDER

Plaintiffs' motion for leave to file a motion for reconsideration is denied.

IT IS SO ORDERED.

Dated: 3-30-99

s/"Charles R. Breyer"
U.S. District Judge

Faxed FEB 18, 1998 8:10PM RANKIN SPROAT MIRES TRAPANI ETAL NO. 153 P.1-P.3

MICHAEL J. REISER, ESQ (Bar No. (133621)
Eugens Ashley, esq (Bar No. 171885)
Rankin, Sproat, Mires, Trapani & Reiser
1800 Harrison Street, Suite 1616
Oakland, Ca 94604 (510) 465-3922
Atty for Defendants John A. vos, Law Office of John A. vos

DATE FILED
FEB 20, 1998
Marin County Courts

SUPERIOR COURT OF CALIF COUNTY OF OMARIN

JOSEPH N.Y.TSU et al.,
Plaintiffs and Appellants,
vs.
JOHN A. VOS, LAW OFFICES OF JOHN A. VOS, and DOES 1 through 10
Defendants and Respondents

No.162817
MOTION TO LIMIT Liability & Causation Evidence
/ Trial Feb 18, 1998,

.....defendant acknowledges that the failure of Mr. Vos to appear at the January 7, 1994 Status conference could be determined to be an omission upon which **a lay person could make a determination of negligence, based upon common knowledge and experience.** As such,....for such 'lay person-cognizable'claims of negligence, it may be permissible for the TSUS to present evidence as to this one specific allegation of negligence.... see, e.g. Standly v. Richmond (1995) 35 Cal App 4th 1070; Goebel v. Lauderdale (1989) 214 Cal App 3d 1502.

However, any evidence relating to any other aspect of the defendants' conduct ....is irrelevant....

Date: Blank

s/ Michael Reiser
Attorney for John A. Vos, Law Office of John A. Vos

Joseph N.Y. Tsu and
Cecilia W. Tsu
213 Clevelnd Court
Mill Valley, Ca in Pro Per

Date Filed
Feb 20, 1998

Superior court of California, county of Marin

Joseph N. Y. Tsu	) Case No. 162817
and Cecilia W. Tsu	) Plaintiffs' Motion In
Plaintiffs	) Limine: **Amend the**
vs.	) **Pleading to include**
John A. Vos, Law	) **conspiracy**
Office of John A. Vos	) Trial: July 16, 1997
	) Before: Hon P.A.Smith

....Conspiracy is based on fraudulent or intentional misconduct, which caused the damages of the plaintiffs. The facts show the law firms, defendant and the lender's have engaged in a persistent course of conduct in concert, flagrantly disregarded the Bankruptcy Rules, codes and court Orders. Bankruptcy codes were a 'device' or 'gimmick' for these attorneys to manipulate the chapter 11 system, and to deceive the presiding judge, at the expense of their unknowledgeable clients, in furtherance of their tacit agreement to defraud his clients/debtors of their said properties in bankruptcy. .....

1. False promises/contract with fraudulent intent not to perform such contract; 2. Obstructed the due administration of law provided under Bankruptcy codes, Bankruptcy Rules and acts;
3. False moves or failed to move in the bankruptcy proceeding; 4. Concealing and misleading the misconduct in court; 5. Committed bankruptcy crime. 6. Falsified evidences. Respectfully submitted. Dated: July 16, 1997.

s/Joseph N. Y. Tsu s/Cecilia w. Tsu

Reporter's Transcript
Motion of the amendment of Pleading To add the delayed discovered issues-claims being Barred

Ms. Tsu: We would like motion to augment our pleading to include conspiracy. ...

Mr. Reiser: ....this would greatly expand the issues in the case including, required additional discovery of certain layers and lenders that have not been an issue to date. I don't think the facts warrant it, and I don't think the tactic is in good faith.

The court: The motion is denied. This is not timely filed and would prejudice the defendant. And in addition, some of the items on here are beyond the jurisdiction of this court.

We're not here to decide whether he committed bankruptcy, fraud, bankruptcy crime, for example. Your motion in limine to amend the pleading to including conspiracy is denied.

Ms. Tsu: May I make a comment?
The court: On what
Ms. Tsu: About the conspiracy.
The court: No, your motion is denied.
Ms. Tsu: Okay. Thank you.

Reporter's Transcript of
State court Order & Judgment of Granting
Defendant's Motion of Nonsuit
Pages: 576-579

The Court: Let the record show that parties, the plaintiffs representing themselves are presented, and defendant with his counsel are present in court. Submitted? For this hearing of this motion, this case involves an alleged breach of professional duties owned by an attorney to a client. And attempt of his responsibilities regarding the client in a proceeding -- United States Bankruptcy Code -- The matter was eventually -- did proceed in the United States Bankruptcy Court for the Northern District of California.

At the completion of plaintiffs' case in chief, defendant has moved, under Section 581(c) of the California Code of Civil Procedure, for a non-suit.

As such, this court accepts all of the evidence presented by plaintiffs as true, and the reasonable inference favorable to plaintiffs in ruling on the motion. Court also notes that plaintiffs have stated on the record that they have presented all their evidence regarding the acts by the defendant.

Plaintiffs have rested without calling an expert witness to testify regarding defendant's alleged breach of the standard of care owned by a bankruptcy attorney to his or her clients.

This court also finds that further non-expert testimony on behalf of plaintiffs would be cumulative under Section 352 of the California Evidence Code; that the Court, in its discretion, may exclude evidence if its probative value is substantially out weighted by the probability that its admission will, (A) necessitate undue consumption of time or, (B),

create substantial damage of undue prejudice or of confusing the jury or misleading the jury.

Plaintiffs have alleged that defendant is an attorney who is a specialist in bankruptcy practice, and that he breached his duty, duty of competent representation. Although breach was the proximate cause of damages to the plaintiffs. Bankruptcy practice is a specialized field of law. Expert testimony is need to decide elements of professional negligence in this area. [*Plaintiff's did not present any expert testimony even though they were told by one prior judge who presided over this case that they needed anattorney and by two subsequent judges presiding over the case,*] *Contrary to the fact, was stricken out, please see below.

including this court, that an expert would be necessary to prove a prima facie case. Now, Lipscom vs Crouse, 87 Cal.App.3d, 970, parenthesis, (1978), close parenthesis, comma; K-i-r-c-h- vs Dys, D-y-a, 21 Cal.3d, 303 (1978), that's in parenthesis; and Wright, W-r-i-g-h-t, vs Williams, 47 CalApp.3d, 802, (1975), the defendants motion for non-suit is granted, comma, and judgment is entered for the defendants.... Court's is recess.

Ms. Tsu: Could I ask a question?
The Court: Yes.
Ms. Tsu: You say the prior judge has instruct the plaintiff to have expert attorney. That's not correct. Because the prior judge only one talking about expert attorney is Judge Allen Smith.

The Court: That's what I said.
Ms. Tsu: Allen Smith (the first trial judge) only

say he would like to wait and see the case, and he never made a conclusion of that.

The Court: * I will amend. I will amend my order. I will amend my order. the last paragraph, starting with, "Plaintiffs did not present any expert testimony," shall read as follows: Plaintiffs did not present any expert testimony, even though they were told by this court on expert testimony would be necessary to prove a prima facie case." Period. I have stricken the part that says two prior judges had told you that, "told on several occasion by this court." I think, if we go back through the record, we'd find there was -- there were some warnings given to you about having expert testimony.

Ms. Tsu: And I have another question. ....
The Court: That's the order of the Court.

LAW OFFICES OF
JOHN A. VOS (80790)
1363 Lincoln Avenue, Suite 5
San Rafael, Ca 94901
Tel No. (415) 485-5330
Attorney for debtors

DATE FILED
Aug 19, 1993
U.S. BANKRUTPC Ct
San Francisco, Ca

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:) No. 93-3 3370 TC
Cecilia and Joseph Tsu) Chapter 11 Bankruptcy
Debtors) Completion Papers
_____)

Attached for the purpose of completing the filing of the above-referenced debtors are the following:

* Summary of Schedules
* Schedule A-Real Property
* Schedule B-Personal Property
* Schedule C-Property claimed as exempt
* Schedule D-creditor holding secured claims
* Schedule E- " " unsec. priority claims
* Schedule F- " " nonpriority claims
* **Schedule G**-Execuory contracts/unexpired lease

Dated: Aug 13, 1993 s/"John A. Vos / bd

The attached **Schedule G** states: No executory contracts or unexpired leases.

I hereby certify that the forgoing is a true and correct copy of theoriginal on file in my office. Dated: 2-23-98 Keenan G. Casady, clerk of Court by "s/ DSqul" , Clerk Seal, U.S Bankrutpy Ct

LAW OFFICES OF
JOHN A. VOS (80790)
1363 Lincoln Avenue, Suite 5
San Rafael, Ca 94901
[la:ApplATY.C11]
Tel NO. (415) 485 5330
proposed* counsel for
Mr. and Mrs. Tsu [*His employment was approved by court on Aug 9, 93 already as required by the Bankruptcy law.]

DATE FILED
SEPT 15, 1993
U.S. BANKRUTPC Ct
San Francisco, Ca
ENTERED IN BANKRUPTCY
DOCKET SEPT 15, 1993

Debtors' list of Co-Debtors is attached.

Dated: September 8, 1993

"S/John A. Vos"
JOHN A. VOS ESQ

SCHEDULE H - CODEBTORS

In Re: Tsu, Joseph and Cecilia / Debtors

Name and Address of Codebtor

[X] Debtor has no codebtors.

I hereby certify that the forgoing is a true and correct copy of the original on file in my office. Dated: 2-23-98 Keenan G. Casady, clerk of Court by "s/ Desqul" , Clerk

POLK, SCHEER & PROBER
SPENCER P. SCHEER
State Bar No. 107750
145 North Redwood Dr. Suite 22
San Rafael, Ca 94903 (415)491-8900
Attorney for Tracy Fed Bank

DATE FILED
JAN 3, 1994

UNITED STATES BANKRUPTCY COURT
NORTHER DISTRICT OF CALIFORNIA

IN RE	BK. No 93-3-3370
JOSEPH TSU AND	R.S. No. 93-1526
CECILIA TSU	CHAPTER 11
debtors	**ORDER CONDITIONING CONTINUANCE OF AUTOMATIC STAY**
	2:00 p.m12-6-93
_____/	235 Pine Street, S. F.

.....IT IS ORDERED THAT AFTER DISMISSED SECURED CREDITOR HELD ITS FORECLOSRE SALE OF THE REAL PROEPRTIES LOCATE AT 6125-6127 Geary BOULEVARD.. ON **SEPTEMBER 8, 1993, TRUSTEE'S DEEDS UPON SALE WERE RECORDED** .... THE RECORDATION OF SECURED CREDITOR'S **TRUSTEE'S DEEDS UPON SALE AND PERFECTION OF TITLES** SHALL ONLY **BE DEEMED VALID** IN ACCORDANCE WITH THE FOLLOWING TERMS AND CONDITIONS: ....

DATE: 1-3-94 "s/ M.K" (not the judge)
U.S. BANKRUPTCY JUDGE

APPROVED AS TO FORM & CONTENT,
BLANK WITHOUT VOS' SIGNATURE
JOHN VOS, ATTORNEY FOR DEBTORS

I hereby certify that the foregoing is a true and correct copy of the original on file in my office Dated: 9/3/97 Keenan G. Casady Clerk of Court By: "s/Matt Given", Clerk SEAL U S B. Ct. CY CT.

TRANSCRIPT OF COURT PROCEEDINGS

BEFORE: HON. THOMAS E. CARLSON, U.S. BKCY JUDGE
Date: DECEMBER 6TH, 1993 COURT HEARING, **The financial condition of the case as stated bu Vos in Court during this 1st hearing.** (the other part of this hearing at APP 29-30)

VOS: "...THEY ARE RESTAURANTS. ONE'S A THREE STORY CHINESE RESTAURANT--

COURT: ARE THEY STILL OPERATING?

VOS: THEY'RE STILL OPERATING. ONE IS --THEY OPERATE, AND ONE THEY LEASE OUT AND GET RENTAL INCOME. (p.5:2-7 OF THE TRANSCRIPT)

VOS: THEY TRIED TO SELL THE LEASED-OUT PROPERTY WHERE THE PIZZZA RESTAURNT IS BEING OPERATED BY SOMEBODY ELSE. THE SBA WOULDN'T ALLOW THE RE-LEASE OF THAT COLLATERAL WHAT WOULD HAVE PAID ROUGHTLY HALF OF THE LOAN, THAT'S A ONE STORY PROPERTY AND THE OTHER IS THREE-STORY. (p.5:9-17)

VOS: THERE'S PLENTY OF EQUITY. THEY'RE HAPPY TO MAKE PAYMENTS. THEY DO HAVE A CONCEPT FOR REORGANIZATION. THE CONCEPT IS THERE' S A FAMOUS PERSONALITY WHO'S IN THE COOKING BUSINESS (Martin Yen) THAT IS LOOKING FOR DEMONSTRATION KITCHEN. THEY'VE BEEN IN CONSULTATION WITH HIM.. SINCE FILING THEY'VE HAD FOUR MEETINGS AND IF SOME-THING CAN HAPPEN WITH HIM THAT'S A SOUCE OF INCOME. (p.6:2-9) A business plan was done with the consul-tation of the head of Hospitality Dept, University of San Francicso.)

VOS: THEY ALSO HAVE ANOTHER PIECE OF PROPERTY (not secured by SBA loan) THEY'VE OWNED THE LONGEST....THEY ARE HAPPY AS PART OF A PLAN OF REORGANIZATION, TO THROW THAT IN THE POT. ...
THEY ARE NOT UNDER WATER...." (p.6:21- p.7:10)

STATUTES INVOLVED

11 U.S.C. §362 Automatic Stay provides in relevant part:
(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, ... operates as a stay, applicable to all entities, of ---
(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
(4) any act to create, perfect, or enforce any lien against property of the estate;
(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;
(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;
(c) Except as provided in subsection (d),(e), and (f) of this section---(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate; and (2) the stay of any other act under subsection (a) of this section continues until the earliest of --(A) the time the case is closed; (B) the time the case is dismissed; or (C).. a case under chapter 9,11,12, or 13 of this title, the time a discharge is granted or denied.
(h) An individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances,may recover punitive damages.

Bankruptcy Rule 7062 Stay of Proceedings to Enforce a Judgment (Rule 62 F.R. Civ.P. applies in adversary proceedings "Subdivision (a) of Rule 62 of the Federal Rules of Civil Procedure is applicable in Bankruptcy cases by virtue of Bankruptcy Rule 7062, Subdivision (a) provides:
(a) Automatic stay: Exceptions, Injections, Receiverships, and Patent Accounts. Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry. Unless otherwise ordered by the court.

Bankruptcy Rule 8002(b) Effect of Motion on Time for Appeal. If any party makes a timely motion of a type specified immediately below, the time for appeal for all parties runs from the entry of the order disposing of the last such motion outstanding. This provision applies to a timely motion: ....(4) for relief under Rule 9024 if the motion is filed no later than 10 days after the entry of judgment.

28 U.S.C. §§1334 (a) and (b)
(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.
(b) Notwithstanding any act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.